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Attorneys for Defendants

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

	:	ECF Case
ANGELO PENA, ROLANDO ROJAS, JOSE	:	
DIROCHE, and FRANKLIN SANTANA,	:	
individually and on behalf of others similarly	:	CIVIL ACTION NO.: 07-CV-7013 (RJH)
situated,	:	
	:	<u>REPLY AFFIDAVIT OF</u>
Plaintiffs,	:	<u>PETER A. WALKER</u>
	:	
v.	:	
	:	
SP PAYROLL, INC., NICHOLAS PARKING,	:	
CORP., IVY PARKING, CORP., BIENVENIDO,	:	
LLC, CASTLE PARKING CORP., SAGE	:	
PARKING CORP., and SAM PODOLAK,	:	
	:	
Defendants.	:	

STATE OF NEW YORK)
)
 COUNTY OF NEW YORK) s.s.:

PETER A. WALKER, being duly sworn, deposes and says:

1. I am a member of the law firm of Seyfarth Shaw LLP, attorneys for defendants SP Payroll, Inc. (“SP Payroll”), Nicholas Parking, Corp. (“Nicholas Parking”), Ivy Parking, Corp. (“Ivy Parking”), Bienvenido, LLC (“Bienvenido Parking”), Castle Parking Corp. (“Castle Parking”), and Sage Parking Corp. (“Sage Parking”) and Sam Podolak (“Podolak”) (collectively,

"Defendants") in the above-captioned action. This reply affidavit is submitted in further support of Defendants' Fed. R. Civ. P. 56 motion for partial summary judgment.

2. Attached hereto as Exhibit A are true and correct copies of the relevant pages of the transcript of the Deposition of Rajesh Kissoon, taken on June 17, 2008.

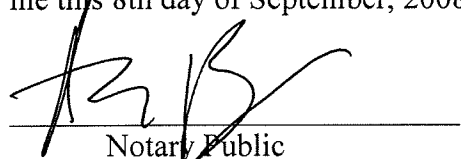
3. Attached hereto as Exhibit B are true and correct copies of the relevant pages of the transcript of the Deposition of David Saperstein, taken on June 18, 2008.

4. Attached hereto as Exhibit C are true and correct copies of the relevant pages of the transcript of the Deposition of Sam Podolak, taken on June 11, 2008.



Peter A. Walker

Sworn to and subscribed before
me this 8th day of September, 2008


Notary Public

ALAYNA BALDANZA
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01BA6103726
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES JANUARY 12, 2012

EXHIBIT A

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 ANGELO PENA, ROLANDO ROJAS,)
5 JOSE DIROCHE, and FRANKLIN)
6 SANTANA, individually and on)
7 behalf of others similarly)
8 situated,)

9 Plaintiffs,)

10 vs.)

11 SP PAYROLL, INC., NICHOLAS)
12 PARKING, CORP., IVY PARKING)
13 CORP., BIENVENIDO, LLC, CASTLE)
14 PARKING CORP., SAGE PARKING)
15 CORP., and SAM PODOLAK,)

16 Defendants.)

17 -----)

18 DEPOSITION OF RAJESH KISSOON
19 New York, New York
20 Tuesday, June 17, 2008
21
22
23

24 Reported by:
25 Philip Rizzuti
JOB NO. 17123

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1 **Kissoon**
2 A. No.
3 **Q. If you would like to take a break**
4 **during the deposition, just say so and we will**
5 **do that. I do ask that we not take a break**
6 **while there is a question pending.**
7 A. Okay.
8 **Q. You will have an opportunity to**
9 **review the transcript and make any changes**
10 **that you want to make. We may have the**
11 **ability to comment on any changes in later**
12 **proceedings.**
13 **Have you discussed your testimony**
14 **with anyone before coming here today?**
15 A. No.
16 **Q. When you started working for SP**
17 **Payroll what was your job or title at that**
18 **time?**
19 A. Supervisor.
20 **Q. What were your responsibilities**
21 **when you started?**
22 A. Working for the manpower, making
23 sure that the guys were on time, scheduling.
24 **Q. Okay?**
25 A. Inventory for the garage.
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1 **Kissoon**
2 Reports, pick up reports.
3 **Q. Any other responsibilities?**
4 A. Maintenance for the garage.
5 **Q. Anything else?**
6 A. No.
7 **Q. Has your job changed since you**
8 **started working for sample?**
9 A. No.
10 **Q. Are you still a supervisor?**
11 A. Yes.
12 **Q. What kind of responsibilities do**
13 **you have in regards to maintenance, I think**
14 **you said maintenance?**
15 A. Maintenance, yes.
16 **Q. What kind of things do you for**
17 **maintenance?**
18 A. Lightbulbs, electricity, if there
19 is any damage in the garage I report it to the
20 office.
21 **Q. What office do you report that to?**
22 A. To Sam and David.
23 **Q. Sam Podolak and David Saperstein?**
24 A. Yes.
25 **Q. Mr. Saperstein who is sitting**
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1 **Kissoon**
2 **here?**
3 A. Yes.
4 **Q. When you started with SP Payroll**
5 **were you responsible for one or more than one**
6 **garage?**
7 A. More than one garage.
8 **Q. How many garages were you**
9 **responsible for when you started?**
10 A. Five.
11 **Q. What were they?**
12 A. Bienvenido, Castle Parking, Sage
13 Parking, Ivy Parking, 145th Street and 155th.
14 It was a total of six.
15 **Q. Have you worked full-time for SP**
16 **Payroll since you started?**
17 A. Yes.
18 **Q. How much time did you spend at**
19 **each garage location when you started?**
20 A. Half an hour to 45 minutes per
21 location.
22 **Q. Per day or per week?**
23 A. Per day.
24 **Q. Did you have a schedule of what**
25 **time of day you would visit one garage or**
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1 **Kissoon**
2 **another?**
3 A. No.
4 **Q. How did you decide which garage**
5 **you would go to at a particular time?**
6 A. I pick one, whatever, I am driving
7 to a location, I choose to go to one and then
8 I decide to go to the other.
9 **Q. Has the list of garages that you**
10 **are responsible for changed since you started**
11 **working for SP Payroll?**
12 A. No.
13 **Q. You are still responsible for the**
14 **same six facilities?**
15 A. No.
16 **Q. How has it changed?**
17 A. If I am responsible for the same
18 six that I identified?
19 **Q. Yes?**
20 A. It is not the same six any more.
21 **Q. Can you tell me how that has**
22 **changed since you started?**
23 A. More responsibility -- can you
24 repeat the question.
25 **Q. Sure. When you started you said**
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1 **Kissoon**
2 you were responsible for six different
3 facilities?
4 A. Yes.
5 **Q. What I am asking is, are there or**
6 **have there been other facilities that you**
7 **became responsible for besides those six; was**
8 **there a time when you were no longer**
9 **responsible for one of the six?**
10 A. It is not changing.
11 **Q. So today you are responsible for**
12 **the same six facilities?**
13 A. Yes.
14 **Q. Has there ever been a time when**
15 **you were responsible for some other facility**
16 **besides the ones, the six that you have**
17 **mentioned?**
18 A. No.
19 **Q. Since you began working for SP**
20 **Payroll have you worked for any other**
21 **companies as well?**
22 A. No.
23 **Q. In your job currently do you still**
24 **spend half an hour to 45 minutes at each of**
25 **these six facilities?**
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1 **Kissoon**
2 A. Same.
3 **Q. Has that been the same for the**
4 **whole time that you have worked for SP**
5 **Payroll?**
6 A. Yes.
7 **Q. When you are not spending time at**
8 **a garage or in transit what are your job**
9 **activities, for example do you work in the**
10 **office?**
11 A. No, I don't work in the office, I
12 work in the garages and I have a private
13 office on the side and I do inventory.
14 **Q. Where is that office located?**
15 A. It is -- all six garages have a
16 section that you sit down and I go over the
17 monthly list.
18 **Q. What type of lists are those?**
19 A. Monthly cards, parking.
20 **Q. It is a list of monthly parkers?**
21 A. Yes, I keep a past due list, make
22 sure everything is okay.
23 **Q. What do you do to make sure that**
24 **the workers are on time?**
25 A. I have them punch in, time card.
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1 **Kissoon**
2 **Q. Has that been the same process**
3 **since you started working for SP Payroll?**
4 A. Same process.
5 **Q. Is there a time clock at each**
6 **garage that the men punch in and out?**
7 A. Yes.
8 **Q. What do you do to make sure that**
9 **they are doing that?**
10 A. I have a view of it every day when
11 I go there, I look at the time card.
12 **Q. You look at the time cards for the**
13 **workers who are there when you are at the**
14 **garage?**
15 A. Yes.
16 **Q. Where are the time cards kept in**
17 **different garages?**
18 A. In different places.
19 **Q. Is there an office?**
20 A. Yes, it is in the office.
21 **Q. Each garage has an office?**
22 A. Each garage has an office.
23 **Q. Is that the same office where you**
24 **go over the monthly lists?**
25 A. Yes.
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1 **Kissoon**
2 **Q. What kind of work do you do in**
3 **terms of scheduling, I think you mentioned**
4 **scheduling is one of your responsibilities?**
5 A. Yes, from when I hire the guys, I
6 put them on the schedule, what time to come to
7 work.
8 **Q. Does each garage have a written**
9 **schedule?**
10 A. Yes.
11 **Q. Are the facilities that you**
12 **mentioned open 24 hours a day or something**
13 **else?**
14 A. 24 hours a day.
15 **Q. Each of them is?**
16 A. Yes.
17 **Q. What type of shifts are there?**
18 A. Eight hour shifts and ten hour
19 shifts.
20 **Q. Eight and ten?**
21 A. Yes.
22 **Q. Can you tell me which facilities**
23 **have which type of shifts?**
24 A. Bienvenido has a 6 to 2. 2 to 10,
25 10 to 6.
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Page 19

1 Kissoon
2 **Q. So that is three eight-hour**
3 **shifts?**
4 A. Yes.
5 **Q. How about castle?**
6 A. Castle has 6 to 4, 4 to 12, and 12
7 to 10.
8 **Q. So is there an overlap in the**
9 **shifts or -- so 6 a.m. to 4 p.m.?**
10 A. Yes. 4 p.m. to midnight and
11 midnight to 10 a.m.
12 **Q. So there is an overlap with the 6**
13 **a.m. and the midnight?**
14 A. Yes.
15 **Q. How about Sage?**
16 A. Sage, same thing like Castle. 6
17 to 4, 4 to midnight, and midnight to 10.
18 **Q. What about Ivy?**
19 A. The same.
20 **Q. And 145th Street?**
21 A. Same.
22 **Q. 155th?**
23 A. The same.
24 **Q. So Bienvenido is the only one that**
25 **is different?**

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1 **Kissoon**
2 A. Yes. It is a one -- 6 to 2, 2 to
3 10 and 10 to 6.
4 **Q. The schedules that you are**
5 **describing are the current schedules?**
6 A. Yes.
7 **Q. Have the schedules changed since**
8 **you started working for SP Payroll?**
9 A. No, it has not changed.
10 **Q. Always been the same since you**
11 **started?**
12 A. Maybe adjustment a little bit.
13 **Q. Can you tell me more specifically**
14 **how it changed?**
15 A. It changed like if the garage is
16 busy, I need an extra man, I would take a man
17 from one garage and put him in the next
18 garage.
19 **Q. How would you find out if you**
20 **needed to do that, with a garage needed extra**
21 **help?**
22 A. If I am at the location at the
23 morning and I see by the tickets, they have a
24 special event in the neighborhood.
25 **Q. Okay. When you sent one or**

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1 Kissoon
2 **another worker from a garage to a different**
3 **garage for an adjustment like you mentioned,**
4 **did the person punch in and out at the place**
5 **that they were sent to?**
6 A. No.
7 **Q. What are your responsibilities in**
8 **terms of picking up reports; I think that is**
9 **one of the things that you mentioned, so tell**
10 **me what that involves?**
11 A. Picking up the reports, like the
12 shift reports in the day. The day report.
13 **Q. What information is in the shift**
14 **reports?**
15 A. The total tickets in the day and
16 the cash and the checks.
17 **Q. You pick up checks and cash also?**
18 A. Yes.
19 **Q. You bring them back to --**
20 A. To the office, 1832 Second Avenue.
21 **Q. Has that process changed since you**
22 **started working at SP Payroll?**
23 A. No.
24 **Q. Always been the same?**
25 A. Always been the same.

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1 Kissoon
2 **Q. While you have worked for SP**
3 **Payroll has anyone else been involved in**
4 **hiring and firing employees?**
5 A. Can you repeat the question.
6 **Q. Since you started working for SP**
7 **Payroll are there other supervisors for that**
8 **company besides yourself?**
9 A. Yes, David Saperstein.
10 **Q. How about supervisors with the**
11 **same type of responsibilities that you have,**
12 **people going to the garages and so forth?**
13 A. We had assistants.
14 **Q. You had an assistant?**
15 A. Yes.
16 **Q. When was that?**
17 A. About two years ago.
18 **Q. What was his name?**
19 A. Pablo Oleas.
20 **Q. Pablo was your assistant for a**
21 **period of time?**
22 A. Yes.
23 **Q. What kind of work did he do?**
24 A. Typically the same thing that I
25 do.

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1 Kissoon
2 **Q. When you started most all of them**
3 **got cash along with their paychecks?**
4 A. Yes.
5 **Q. Now today some workers get cash**
6 **and some don't?**
7 A. Mostly all of them get cash along
8 with the check.
9 **Q. Has that been true for all of the**
10 **time that you worked for SP Payroll, that some**
11 **workers get cash along with their paychecks?**
12 A. Yes.
13 **Q. Again correct me if I am wrong,**
14 **you are not involved in deciding -- if I**
15 **understand you correctly, you are not involved**
16 **in deciding what amount of cash any particular**
17 **worker is supposed to get?**
18 A. I am not involved.
19 **Q. Do you know who makes that**
20 **decision?**
21 A. David.
22 **Q. Did David ever tell you how he**
23 **makes that decision?**
24 A. No. I don't remember.
25 **Q. He didn't?**
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1 Kissoon
2 A. Maybe he did tell me, but I don't
3 remember.
4 **Q. He might have you?**
5 A. Yes, but I don't remember what he
6 said. I don't know.
7 **Q. You don't remember?**
8 A. No.
9 **Q. Do you recall if you have**
10 **discussed that with David on one occasion or**
11 **more than one occasion?**
12 A. He might have told me, but I don't
13 remember discussing it.
14 **Q. How about discussing it with Sam**
15 **Podolak?**
16 A. I didn't discuss it with Sam
17 Podolak.
18 **Q. Do you know Miguel Alcantara?**
19 A. Yes.
20 **Q. Does he or did he work at one of**
21 **the garages that you handle?**
22 A. He did.
23 **Q. Which one was that?**
24 A. Two location, 145th and 155th.
25 **Q. Does he still work there?**
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1 Kissoon
2 A. No, he doesn't.
3 **Q. Do you know Edison Alvarez?**
4 A. Yes.
5 **Q. Did he work for one of the**
6 **garages?**
7 A. Yes, Ivy Parking.
8 **Q. Does he still work there?**
9 A. No.
10 **Q. How about do you know**
11 **Mr. Diroche -- I want to ask you about another**
12 **person, I just don't remember his first name.**
13 **Jose Diroche?**
14 A. Yes.
15 **Q. Do you know him?**
16 A. Yes.
17 **Q. Is he assigned to one of the**
18 **garages that you are responsible for?**
19 A. Yes.
20 **Q. Which one?**
21 A. Two. Bienvenido, LLC and Sage
22 Parking.
23 **Q. Does he still work at both those**
24 **locations?**
25 A. No.
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1 Kissoon
2 **Q. Does he still work at either one**
3 **or did he stop working?**
4 A. He stopped working. Let me strike
5 that, he quit.
6 **Q. He quit?**
7 A. Yes.
8 **Q. When was that, do you remember?**
9 A. I don't remember.
10 **Q. Is there a Mr. Garcia that worked**
11 **or works at one of the garages?**
12 A. There is a lot of Garcia's.
13 **Q. Miguel Garcia?**
14 A. Yes.
15 **Q. Where does he or did he work?**
16 A. 145th Street.
17 **Q. Does he still work there?**
18 A. No.
19 **Q. How about Patricio Gonzalez, do**
20 **you know him?**
21 A. Yes.
22 **Q. Where does he or did he work?**
23 A. He worked at Sage Parking.
24 **Q. Does he still work there?**
25 A. No.
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1 Kissoon
2 **Q. Next I would like to show you what**
3 **we marked as Plaintiff's Exhibit 6.**
4 **(Handing document to witness.)**
5 A. Okay.
6 **Q. After you had a chance to look at**
7 **it my question is whether you recognize this**
8 **type of document?**
9 A. Yes.
10 **Q. What is it?**
11 A. Paycheck.
12 **Q. Pay stub?**
13 A. Pay stub, yes.
14 **Q. Is this a type of document that**
15 **you work with normally in the course of your**
16 **work?**
17 A. No.
18 **Q. Can you tell me where you have**
19 **seen pay stubs, in the office, in the garage,**
20 **in the envelopes, anything else?**
21 A. It is in the envelope to the men,
22 with the checks.
23 **Q. Are there pay stubs or copies of**
24 **pay stubs that are kept in the office on**
25 **Second Avenue, do you know?**
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1 Kissoon
2 A. I don't know.
3 **Q. Let me ask you to look at what we**
4 **marked as Plaintiff's Exhibit 7, and when you**
5 **have had a chance to look at it my question is**
6 **whether you recognize that particular**
7 **document.**
8 **(Handing document to witness.)**
9 A. Yes, I do recognize it.
10 **Q. What is it?**
11 A. Time card.
12 **Q. For?**
13 A. For Angelo Pena.
14 **Q. Up at the top there where it says**
15 **7/16/07, is that the date?**
16 A. That is the date, 7/16/07.
17 **Q. Is that the date -- first of all**
18 **do you know whose handwriting that is?**
19 A. It could have been mine.
20 **Q. It might be yours?**
21 A. Yes.
22 **Q. It is?**
23 A. It is.
24 **Q. When you put the date on this time**
25 **card was it already punched in and out, or was**
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1 Kissoon
2 **it blank?**
3 A. It was blank.
4 **Q. Now, the 7/16/07, is that --**
5 A. That is the month, the date and
6 the year.
7 **Q. Do you make out a blank time card**
8 **for each worker at each garage?**
9 A. Yes, I do.
10 **Q. Do you do that on a weekly basis**
11 **or some other basis?**
12 A. Every two weeks.
13 **Q. Does this time card show when**
14 **Mr. Pena punched in and out?**
15 A. Yes.
16 **Q. Do you know which garage this is**
17 **at?**
18 A. No, I don't.
19 **Q. We can't tell by looking at it;**
20 **right?**
21 A. It might be Sage and Bienvenido.
22 **Q. Two different garages?**
23 A. Yes.
24 **Q. Is there some information on the**
25 **time card that shows that he was at two**
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1 Kissoon
2 **different garages?**
3 A. No.
4 **Q. But you remember in July of '07 he**
5 **was working in two different places?**
6 A. Yes. Two different garages.
7 **Q. If we look at the times that are**
8 **punched in and out here, it starts with July**
9 **30; is that right?**
10 A. Yes, right.
11 **Q. So he punched in 3:50 p.m. and out**
12 **at 11:50 p.m.?**
13 A. Yes.
14 **Q. Then July 31, 4:05 people to 11:56**
15 **p.m. August 1, 3:52 p.m. to 11:51 p.m.; is**
16 **that right?**
17 A. Yes.
18 **Q. And August 3rd, 4 p.m.?**
19 A. Yes.
20 **Q. That is handwritten?**
21 A. Yes.
22 **Q. Do you know whose handwriting that**
23 **is?**
24 A. Angelo's handwriting.
25 **Q. Do you know why it is in**
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Page 47

1 **Kissoon**
2 **handwriting rather than stamped?**
3 A. Probably forgot to punch.
4 **Q. So August 3rd, we have 4 to 12:03?**
5 A. Yes.
6 **Q. Then there is another entry for**
7 **August 3rd?**
8 A. Yes, because he came in at -- on
9 August 3rd, 4:23 p.m. and he left at 12:18
10 a.m.
11 **Q. Let's back up a minute. He starts**
12 **at 3 p.m. -- I am sorry, August 3rd, 4 p.m.?**
13 A. That should not have been August
14 3, it should have been August 2nd.
15 **Q. August 2nd, 4 p.m. to August 3rd,**
16 **12:03 a.m., so the date changed because he**
17 **went past midnight; is that correct?**
18 A. Yes.
19 **Q. Then August 3rd he is back at 4:23**
20 **p.m. to --**
21 A. He is late.
22 **Q. He is supposed to start at 4 p.m.?**
23 A. Yes.
24 **Q. He is past midnight, so it is**
25 **August 4th?**

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1 **Kissoon**
2 A. Yes.
3 **Q. August 6th, 4:08 p.m. to 11:51**
4 **p.m.?**
5 A. Yes.
6 **Q. August 7th?**
7 A. 3:55 p.m. to 11:52 p.m..
8 **Q. Okay, then for August 8th there is**
9 **only one entry, do you see that?**
10 A. Yes.
11 **Q. It says August 8th, 3:58 p.m., do**
12 **you see that?**
13 A. He forgot to punch out.
14 **Q. Is there any way to know how long**
15 **he worked that day?**
16 A. Yes.
17 **Q. How would we find out?**
18 A. How we would find that out, the
19 man who came to relieve him.
20 **Q. You would ask that person or you**
21 **would look at his time card or something else?**
22 A. Look at his time card.
23 **Q. And you would make an assumption**
24 **that Mr. Pena left when the other person**
25 **started?**

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Page 49

1 **Kissoon**
2 A. Yes.
3 MS. MEYERS: Objection.
4 **Q. Were you there when Mr. Pena**
5 **forgot to punch out?**
6 A. No, I wasn't.
7 **Q. Let's see, August 17th, August**
8 **18th is 4:03 p.m. to 12:07 a.m. on the 19th?**
9 A. Yes.
10 **Q. Then August 20th, 11:52 p.m. to --**
11 **what happened according to this on August 20?**
12 A. He didn't punch in.
13 **Q. The 11:52 p.m. is a punch out**
14 **time?**
15 A. Yes.
16 **Q. Did you need to know when he**
17 **punched in on August 20th?**
18 A. He forgot the punch in, but he
19 relieved the other day, the next person.
20 **Q. Do you know who the other person**
21 **was that he took over for?**
22 A. Samuel.
23 **Q. You are not sure?**
24 A. Samuel, yes.
25 **Q. Did you need to find out how many**

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1 **Kissoon**
2 **hours Mr. Pena worked on August 20th?**
3 A. I could know by looking at the
4 other time card.
5 **Q. You could know?**
6 A. Yes.
7 **Q. Is that something that you did, do**
8 **you remember doing that?**
9 A. I can't remember.
10 **Q. Let's put that aside for the**
11 **moment.**
12 A. Yes.
13 **Q. Well, before I finish with that.**
14 **I think you said the time cards are always**
15 **kept at the garages; is that correct?**
16 A. Yes.
17 **Q. They are never moved to the office**
18 **on Second Avenue?**
19 A. No.
20 **Q. How are the time cards stored, are**
21 **they in a file box?**
22 A. In a box.
23 **Q. How if at all are they organized?**
24 A. Mostly organized.
25 **Q. Sorry?**

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1 Kissoon
 2 Q. Yes.
 3 A. Employees.
 4 Q. When you wrote this, the writing
 5 by Sam, that was put on by Sam, that was
 6 afterwards; right?
 7 A. Yes.
 8 Q. Tell me how you went about
 9 creating this particular report?
 10 A. Look at the time cards, the man on
 11 duty, when they punch in, punch out, calculate
 12 the hours.
 13 Q. So you would go through each time
 14 card?
 15 A. Yes.
 16 Q. When you did that were you at
 17 the -- at each garage or you did that in the
 18 office or something else?
 19 A. I did that at the garage.
 20 Q. So if we look at the first garage
 21 which is Bienvenido, the first one that is
 22 listed?
 23 A. Yes.
 24 Q. And it says the first name there
 25 is Sammy, six days, 72 hours?
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1 Kissoon
 2 A. 40 hours regular, 26 hours
 3 overtime.
 4 Q. So that is a total of 66; is that
 5 right?
 6 A. Yes.
 7 Q. Was the 66 hours the amount of
 8 hours that this particular person was paid for
 9 do you know?
 10 MS. MEYERS: Don't guess.
 11 Q. I don't need you to guess?
 12 A. I can't remember.
 13 Q. Did Sam ever tell you how he
 14 arrived at the numbers for the workers when he
 15 wrote the numbers on these type of reports,
 16 for example with Sammy, how he got from 72
 17 hours worked to a total of 40 plus 26, a total
 18 of 66?
 19 A. I cannot remember.
 20 Q. Did anyone else ever tell you how
 21 Sam did that?
 22 A. No.
 23 Q. You never spoke with David about
 24 it?
 25 A. No.
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1 Kissoon
 2 A. Yes.
 3 Q. Is that information that you got
 4 from the time card for that person?
 5 A. Yes.
 6 Q. The 72 is 72 hours, that was the
 7 time worked according to his time card?
 8 A. Yes.
 9 Q. Then over on the left there is a
 10 40 plus 26, that is Sam's writing?
 11 A. Yes.
 12 Q. When did Sam write that, you gave
 13 this report to Sam or he came to the garage or
 14 what?
 15 A. I handed in end of the week.
 16 Q. Did he give it back to you after
 17 he had put numbers on here?
 18 A. No.
 19 Q. Do you know what Sam did with your
 20 report after you gave it to him?
 21 A. No, I don't know.
 22 Q. Do you know what the 40 plus 26
 23 means that Sam wrote here?
 24 A. Yes.
 25 Q. What does it mean?
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1 Kissoon
 2 Q. Or anyone else?
 3 A. No.
 4 Q. No one else you said?
 5 A. No one else.
 6 Q. Now, this is a type of report that
 7 you would fill out at each garage and then
 8 bring it to Sam at the office; is that
 9 correct?
 10 A. Yes.
 11 Q. You did that on a weekly basis
 12 ever since you started working for SP Payroll?
 13 A. Yes.
 14 Q. Down at the bottom where it says
 15 Raj, 20, do you see that?
 16 A. Yes.
 17 Q. Do you know what that refers to?
 18 A. No, I don't.
 19 Q. Were you paid on an hourly basis?
 20 A. Salary.
 21 Q. Were you ever paid on an hourly
 22 basis by SP Payroll?
 23 A. No.
 24 Q. Is there a name for the type of
 25 report that we are looking at on the second
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1 **Kissoon**
2 **page here of Exhibit 9, is there a name that**
3 **you would refer to it by?**
4 A. No.
5 **Q. Did you ever call it a weekly**
6 **report or anything?**
7 A. I am not sure.
8 **Q. You are not sure?**
9 A. I am not sure.
10 **Q. Are these reports kept in the**
11 **office at, what is it 1832 Second Avenue, is**
12 **that where they are kept?**
13 A. Yes.
14 **Q. And how are they stored there, are**
15 **they in a file cabinet or something else?**
16 A. File cabinet.
17 **Q. Do you know how far back in time**
18 **the records go that are there today, the**
19 **reports that are there today?**
20 A. No, I don't.
21 **Q. Do you know who is responsible for**
22 **maintaining them?**
23 A. No, I don't.
24 **Q. Were you involved in gathering or**
25 **copying these type of reports for this**
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1 **Kissoon**
2 **lawsuit?**
3 A. No.
4 **Q. Do you know who was involved in**
5 **doing that?**
6 A. I don't know.
7 MR. BERNSTEIN: Let's mark as
8 Plaintiff's Exhibit 12, a series of
9 documents that was produced by your
10 attorney. Again the Bates numbers didn't
11 print out, but it is 4294 to 4355. So
12 that is going to be Plaintiff's Exhibit
13 12.
14 (Plaintiff's Exhibit 12, Bates
15 numbers 4294 to 4355, marked for
16 identification, as of this date.)
17 A. Can I open it?
18 **Q. Yes, sure.**
19 **Have you had a chance to glance at**
20 **Exhibit 12?**
21 A. Over it?
22 **Q. Not in detail, I know it is a lot?**
23 A. Okay.
24 **Q. My first question is, are there**
25 **some pages in Exhibit 12 that you prepared,**
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1 **Kissoon**
2 **that you wrote?**
3 A. I wrote this.
4 **Q. You wrote all of the reports?**
5 A. All of these reports.
6 **Q. Right up on the first page there**
7 **up at the top it says 8/25/03 to 9/1/03, it**
8 **says Raj okay?**
9 A. Yes.
10 **Q. You wrote that?**
11 A. Yes.
12 **Q. What did you mean by writing Raj**
13 **okay?**
14 A. I just put my name on it.
15 **Q. These are the same type of reports**
16 **that we looked at in the previous exhibit?**
17 A. Yes.
18 **Q. You looked at the time cards to**
19 **get the hours for each person?**
20 A. Yes.
21 **Q. You did that at each garage?**
22 A. At each garage.
23 **Q. Then you handed the report to Sam?**
24 A. Correct.
25 **Q. And he put his numbers on there**
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1 **Kissoon**
2 **after you gave it to him; is that correct?**
3 A. Yes.
4 **Q. Did you get a copy of these**
5 **reports back from Sam after he put these**
6 **numbers on them?**
7 A. No.
8 MR. BERNSTEIN: Let's mark as
9 Plaintiff's Exhibit 13, a series of
10 documents that was produced by your
11 attorney.
12 (Plaintiff's Exhibit 13, Bates
13 number 4270 to 4293, marked for
14 identification, as of this date.)
15 **Q. Again the Bates numbers did not**
16 **print out, but it is Bates number 4270 to**
17 **4293.**
18 A. Okay.
19 **Q. Have you had a chance to look at**
20 **that one?**
21 A. Yes.
22 **Q. Do you recognize these pages?**
23 A. Yes, I do.
24 **Q. Can you tell me what they are?**
25 A. The weekly pays, that I get for
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1 Kissoon
 2 the day, how many hours per day they work.
 3 **Q. This is a record that you created?**
 4 A. Yes.
 5 **Q. This is your handwriting?**
 6 A. Yes.
 7 **Q. So look at the first page for**
 8 **example, this is for Bienvenido?**
 9 A. Yes.
 10 **Q. And it is for December 31, 2007 to**
 11 **January 6, 2008; is that right?**
 12 A. Yes.
 13 **Q. It lists six workers at**
 14 **Bienvenido?**
 15 A. Six employees.
 16 **Q. The numbers for each person for**
 17 **each day, is that the number of hours that**
 18 **they actually worked?**
 19 A. Yes.
 20 **Q. Where did you get the information**
 21 **to fill in for each person?**
 22 A. From the time cards.
 23 **Q. Is this a type of record that you**
 24 **prepared at each garage?**
 25 A. Yes.
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1 Kissoon
 2 **Q. Did you do that on a weekly basis?**
 3 A. Yes.
 4 **Q. And what if anything did you do**
 5 **with these reports after you created them?**
 6 A. I fax this over to David.
 7 **Q. You faxed it to David?**
 8 A. Yes.
 9 **Q. When you started working at SP**
 10 **Payroll were you creating these type of**
 11 **reports, or did they start later on?**
 12 A. They started later on.
 13 **Q. When did it start?**
 14 A. Around 2003 or 2004.
 15 **Q. How did that happen, did someone**
 16 **ask you to do the reports in this form or**
 17 **something else?**
 18 A. David made a copy of the sheet
 19 blank and I fill it in.
 20 **Q. So this is a type of report that**
 21 **you gave to David?**
 22 A. End of the week.
 23 **Q. Did David tell you why he wanted**
 24 **you to fill out these type of reports?**
 25 A. Yes, for the man hours per day.
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1 Kissoon
 2 **Q. He wanted to know the man hours**
 3 **per day?**
 4 A. Yes.
 5 **Q. Do you know how David utilized the**
 6 **information that you gave him in these**
 7 **reports?**
 8 A. No.
 9 MR. BERNSTEIN: Let's mark as
 10 Plaintiff's Exhibit 14, documents that
 11 were produced by your attorney, Bates
 12 stamped 3078 and 3079.
 13 (Plaintiff's Exhibit 14, Bates
 14 stamps 3078 and 3079, marked for
 15 identification, as of this date.)
 16 **Q. Now, the second page there, is**
 17 **that a report that you created?**
 18 A. Yes.
 19 **Q. Then Sam wrote numbers on here as**
 20 **well?**
 21 A. Yes.
 22 **Q. Now, the first page, do you**
 23 **recognize that, the printed page?**
 24 A. Yes.
 25 **Q. What is the first page?**
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1 Kissoon
 2 A. First page is the employee's name.
 3 **Q. Okay.**
 4 A. And total hours that they worked.
 5 **Q. Do you know who created the report**
 6 **that is on the first page there?**
 7 A. This page (indicating)?
 8 **Q. Yes.**
 9 A. Who created it; David.
 10 **Q. Is there a name for this type of**
 11 **report?**
 12 A. I don't know, I don't know what
 13 the name of it is.
 14 **Q. Okay. So looking at the first**
 15 **page here, it goes by garages, Bienvenido and**
 16 **so forth. With workers names for each one; is**
 17 **that correct?**
 18 A. Yes.
 19 **Q. Then there is a column that says**
 20 **pay, there is some ones?**
 21 A. Yes.
 22 **Q. Do you know what those numbers**
 23 **are?**
 24 A. Yes.
 25 **Q. What that means?**
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1 **Kissoon**
2 A. No.
3 **Q. Then there is a column for total**
4 **net pay, do you see that?**
5 A. Yes.
6 **Q. Did David give you copies of**
7 **reports like this?**
8 A. Yes, he did.
9 **Q. On a weekly basis?**
10 A. Weekly basis.
11 **Q. How did you utilize these reports,**
12 **what did you do with them if anything?**
13 A. I kept them.
14 **Q. Sorry?**
15 A. I filed them in the garages at
16 155th Street.
17 **Q. I am sorry, they are filed at the**
18 **different garages or at 155th Street or both?**
19 A. At 155th Street.
20 **Q. These are filed at 155th Street?**
21 A. Yes.
22 **Q. Do they ever go to the other**
23 **garages before they are filed at 155th Street?**
24 A. I don't know.
25 **Q. Well, when you get them do you**

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1 **Kissoon**
2 **bring them directly to 155th Street; is that**
3 **right?**
4 A. No, this is what the man pays with
5 envelopes.
6 **Q. So you take this to the location?**
7 A. Each location and then I file it
8 at the end.
9 **Q. Then there is a column for total**
10 **hours worked?**
11 A. Yes, I see it.
12 **Q. Do you know where that number**
13 **comes from?**
14 A. No.
15 **Q. The next column is net check, do**
16 **you know what that number is, what that number**
17 **represents?**
18 A. No.
19 **Q. You don't know?**
20 A. No.
21 **Q. You need to say --**
22 A. I don't know, no.
23 **Q. You don't?**
24 A. No, I don't.
25 **Q. Then there is a column C, do you**

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1 **Kissoon**
2 **know what those numbers represent?**
3 A. Yes.
4 **Q. What is that?**
5 A. Cash.
6 **Q. Is that the amount of cash that**
7 **was supposed to be given to the different**
8 **workers?**
9 A. That were in envelopes.
10 **Q. Then what does that last column of**
11 **numbers?**
12 A. Where it says \$17?
13 **Q. Yes.**
14 A. Cash. Rounded off from \$17.21,
15 \$17.
16 **Q. So the rounded off number, is that**
17 **the number that each worker was supposed to**
18 **get?**
19 A. 17.
20 **Q. I see.**
21 **Did David ever tell you what or**
22 **how he arrived at the cash amounts for the**
23 **different workers?**
24 A. He may have told me, but I don't
25 remember.

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1 **Kissoon**
2 **Q. So you don't remember?**
3 A. He might have told me, but I don't
4 remember.
5 **Q. What makes you think that he might**
6 **have told you?**
7 A. He might have told me because it
8 is for lunch hours.
9 **Q. When you say he might have told**
10 **you that it was for lunch hours, what do you**
11 **base that on?**
12 A. That he got paid \$17 for lunch
13 hours.
14 **Q. Why do you think it was for lunch**
15 **hours?**
16 A. Because he told me.
17 **Q. David told you?**
18 A. Yes.
19 **Q. It was for lunch hours?**
20 A. Yes.
21 **Q. When David told you that, do you**
22 **recall where that happened, were you in the**
23 **office or somewhere else?**
24 A. I might be at the office.
25 **Q. You are not sure?**

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1 **Kissoon**
2 A. I am not sure.
3 **Q. Do you remember if it was in**
4 **person conversation or on the telephone or**
5 **something else?**
6 A. Private conversation or telephone.
7 I don't recall, I am not sure.
8 **Q. You are not sure?**
9 A. No.
10 **Q. How did that come up, did you ask**
11 **David about it or he initiated the discussion**
12 **or something else?**
13 A. He told me about it.
14 **Q. When did this happen?**
15 A. 2004.
16 **Q. Can you tell me how you remember**
17 **that it was sometime in 2004?**
18 A. I am looking at the paper.
19 **Q. Because the paper is dated**
20 **12/31/04?**
21 A. Yes.
22 **Q. Do you recall when David first**
23 **started giving you these type of reports?**
24 A. No, I don't recall.
25 **Q. Was it at the beginning of when**
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1 **Kissoon**
2 **you worked for SP Payroll or a later time?**
3 A. The beginning of SP Payroll.
4 **Q. I may have asked you this, did**
5 **David ever tell you how you arrived at the**
6 **different amounts for each person for the**
7 **lunch hour cash?**
8 A. No.
9 **Q. He never --**
10 A. He never did.
11 **Q. Did David ever tell you why the**
12 **workers were supposed to get cash for lunch**
13 **hours as opposed to putting it in their**
14 **paycheck?**
15 A. Can you repeat it back one more
16 time, please.
17 **Q. Yes. According to this report**
18 **there is a cash amount that is supposed to go**
19 **to each worker for lunch hour is what David**
20 **told you; is that correct?**
21 A. Yes.
22 **Q. Did David ever tell you why that**
23 **part of the workers pay was supposed to be**
24 **given to them in cash as opposed to putting it**
25 **in their paycheck?**
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1 **Kissoon**
2 A. No, he never did explain it to me.
3 **Q. Did Sam ever explain it to you?**
4 A. No.
5 **Q. Did you ever ask anyone about it?**
6 A. No.
7 **Q. Do you know who made the decision**
8 **to pay the workers for lunch hour?**
9 A. No, I don't.
10 **Q. It was not a decision that you**
11 **made?**
12 A. No.
13 **Q. Did anyone ever tell you why the**
14 **workers were supposed to get cash for lunch**
15 **hours -- I am sorry, did anyone ever tell you**
16 **why workers were supposed to be paid for their**
17 **lunch hour?**
18 A. No.
19 **Q. Did you ever ask about that?**
20 A. No, I never did.
21 MR. BERNSTEIN: Let's mark as
22 Plaintiff's Exhibit 15, documents that
23 were turned over to us by your attorney,
24 Bates numbered 4240 to 4269.
25 (Plaintiff's Exhibit 15, Bates
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1 **Kissoon**
2 numbers 4240 to 4269, marked for
3 identification, as of this date.)
4 **Q. Have you had a chance to look**
5 **through that exhibit?**
6 A. Yes, I did.
7 **Q. Do you recognize those pages?**
8 A. Yes.
9 **Q. What are they?**
10 A. Man hours per week.
11 **Q. Are these reports that David gave**
12 **you?**
13 A. Yes.
14 **Q. Similar to the one that we just**
15 **looked at?**
16 A. Similar, yes.
17 **Q. If you look at the first page it**
18 **says period ending 9/10/06, there is a list of**
19 **garages with different workers names; is that**
20 **correct?**
21 A. Yes.
22 **Q. So for example if I look at the**
23 **first one, why don't we take Jose Diroche, the**
24 **fourth one down, there is a number for total**
25 **net pay is 137; is that right?**
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1 Kissoon
 2 **Q. Once or twice a month --**
 3 A. They have the Yankee game, and I
 4 go by and help them out.
 5 **Q. What do you do to help them out?**
 6 A. I help them park the car. I issue
 7 tickets for the car.
 8 **Q. So once or twice a month you are**
 9 **at the 155th Street garage between 10 p.m. and**
 10 **4 a.m.?**
 11 A. Between -- between 8 to 12. 8
 12 p.m. to 12 a.m.
 13 **Q. But what I want to know is whether**
 14 **you are ever at that garage or another garage**
 15 **in the hours between midnight -- I am sorry.**
 16 **Between the hours of 10 p.m. and 4 a.m.?**
 17 A. Yes.
 18 **Q. Sometimes up to midnight?**
 19 A. Sometimes up to midnight.
 20 **Q. How about between midnight and 4**
 21 **a.m., were you ever in any garage?**
 22 A. I stop by, I come in at 4 a.m. in
 23 the morning.
 24 **Q. Before 4 a.m.?**
 25 A. No.

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1 Kissoon
 2 **Q. That is a no?**
 3 A. Before 4 a.m.; yes, I am at the
 4 garage at 4 a.m.
 5 **Q. I mean before 4 a.m., like at 2**
 6 **a.m., 3 a.m.?**
 7 A. No, I am not there.
 8 **Q. Were the employees ever given cash**
 9 **for any reason other than you have already**
 10 **said. You said they got cash for lunch hour,**
 11 **sometimes extra pay for being a good worker?**
 12 A. Yes.
 13 **Q. Were there any other reasons why**
 14 **employees got cash?**
 15 A. No.
 16 **Q. How do you know that?**
 17 A. I know because I see the printout
 18 of what David gives them.
 19 **Q. Was there ever a time when the**
 20 **employees punched in and out for lunch break?**
 21 A. We tried and it never happened, we
 22 couldn't do it.
 23 **Q. What did you try and -- first of**
 24 **all you say we tried, who is we?**
 25 A. Chris, he is the one that asked

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1 Kissoon
 2 the men, to have them punch out during lunch.
 3 **Q. What is Chris's last name?**
 4 A. I don't know the last name.
 5 **Q. This is not --**
 6 A. The same guy that went around with
 7 me with this.
 8 **Q. What garage is he at?**
 9 A. Wooster Parking.
 10 **Q. What did you and Chris do or talk**
 11 **about?**
 12 A. I explained to Chris to tell them
 13 that they are going to have lunch from 12 to
 14 one or 11 to 12 or 2 to 3, to let them punch
 15 out and punch back in when they return.
 16 **Q. You told Chris to tell the workers**
 17 **that?**
 18 A. Yes.
 19 **Q. What garages was that for?**
 20 A. All six garages.
 21 **Q. Why did you tell Chris or ask**
 22 **Chris to do that?**
 23 A. Because they told me to let them
 24 punch in and punch out, for lunch hours, and
 25 they always punch in times, but they never

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1 Kissoon
 2 punch out, so they never get it right.
 3 **Q. You are talking about lunch break?**
 4 A. Only the lunch break.
 5 **Q. So they never -- they forgot to**
 6 **punch out?**
 7 A. Or punch in.
 8 **Q. But they would punch back in?**
 9 A. Yes, they would forget to punch
 10 out, but they would forget to punch in.
 11 **Q. When did this happen, when did you**
 12 **try this?**
 13 A. 2004.
 14 **Q. How long did this last, this**
 15 **experiment?**
 16 A. We tried to do it, but they didn't
 17 comprehend.
 18 **Q. So when did it start in 2004?**
 19 A. Middle of the year.
 20 **Q. How long did they try to do this?**
 21 A. For a week, two weeks.
 22 **Q. Did someone decide that the**
 23 **process was not working; did someone come to**
 24 **that conclusion?**
 25 A. No, I don't think no one came to

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1 Kissoon
2 that conclusion.
3 **Q. Did you have some discussion with**
4 **David about that?**
5 A. I spoke to David and Sam about it.
6 **Q. What did they say, or what did you**
7 **tell them?**
8 A. I explained to them, I was trying
9 to get them to punch in and out for lunch and
10 the guys were not doing it right.
11 **Q. What did they say to you?**
12 A. I don't remember what they said to
13 me.
14 **Q. Did they tell you to have the**
15 **workers not punch in and out any more for**
16 **lunch?**
17 A. I don't remember.
18 **Q. You don't remember?**
19 A. No.
20 **Q. How did you know that people were**
21 **forgetting to punch in or punch out for lunch**
22 **break?**
23 A. Because I would go to the time
24 cards and look at it. I would see that they
25 are going for lunch and they never punched
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1 Kissoon
2 out.
3 **Q. So there are time cards for -- so**
4 **there are time cards for --**
5 A. The same card that they used to
6 punch in and out in the morning, they use the
7 same card.
8 **Q. So there are time cards from**
9 **sometime in the middle of '04 that show people**
10 **punching in, and maybe punching out for lunch,**
11 **maybe both or maybe not?**
12 A. I don't know, I can't remember.
13 **Q. But you did see time cards at the**
14 **time that showed that people were forgetting?**
15 A. Yes.
16 **Q. I think I am pretty much done, I**
17 **would like to take a couple of minutes. Off**
18 **the record.**
19 (Recess taken.)
20 **Q. Back on the record.**
21 Let me show you what we marked as
22 Exhibit 8, do you recognize that particular
23 document, is that something that you have seen
24 before today, either the original or a copy?
25 A. I might have seen something like
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1 Kissoon
2 this.
3 **Q. You might have?**
4 A. Yes.
5 **Q. Did you?**
6 A. I am not sure, but I might have.
7 **Q. But I want to know if you did; I**
8 **am more interested in the type of document**
9 **than the specific information on that one?**
10 A. I am not sure.
11 **Q. Did you work with this type of**
12 **report in your usual normal course of your**
13 **work?**
14 A. Yes.
15 **Q. Tell me how you used that type of**
16 **report?**
17 A. How I used it?
18 **Q. Yes.**
19 A. They would issue it to me,
20 correspond the hours that they worked.
21 **Q. David gave you copies like this?**
22 A. Copies like this, for the paid
23 checks, I break down the hours that they
24 worked.
25 **Q. So the one we are looking at is**
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1 Kissoon
2 **J&I, what is that 155th Street?**
3 A. Yes.
4 **Q. This says it is for the period**
5 **ending January 6, '08?**
6 A. Yes.
7 **Q. Is this something that David gave**
8 **you along with the paychecks that you were**
9 **going to give out?**
10 A. Yes.
11 **Q. So we have the names of the**
12 **employees and then the next column is that**
13 **hours?**
14 A. Yes.
15 **Q. That they are being paid for?**
16 A. Yes.
17 **Q. Then the next column, what is**
18 **that, what information is that?**
19 A. I don't know what is that.
20 **Q. These columns don't have any**
21 **headers?**
22 A. No, they don't have any header
23 breakdown.
24 **Q. Do any of the numbers refer to**
25 **cash amounts do you know on this particular**
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EXHIBIT B

1
2 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3 - - - - - X

4 ANGELO PENA, ROLANDO ROJAS,)
JOSE DIROCHE, and FRANKLIN)
SANTANA, individually and on)
5 behalf of others similarly)
situated,)

6 Plaintiffs,)

7 -against-)

8) Index No.
9) 07 CV 7013

9 SP PAYROLL, INC., NICHOLAS)
PARKING, CORP., IVY PARKING)
10 CORP., BIENVENIDO, LLC, CASTLE)
PARKING CORP., SAGE PARKING)
11 CORP., and SAM PODOLAK,)

12 Defendants.)

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18
19 DEPOSITION OF DAVID SAPERSTEIN
New York, New York
20 June 18, 2008
21
22

23
24 Reported by:
Judi Johnson, RPR, CLR
25 Job No.: 17084

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1 **DAVID SAPERSTEIN**
2 A This is while Sam was doing --
3 **Q Yes.**
4 A No.
5 **Q Did Sam ever tell you how he arrived**
6 **at the cash amounts?**
7 A The specific amounts, no.
8 **Q Did he tell you anything generally**
9 **about how he was doing that?**
10 A That he inherited the system from I
11 believe it's Jose Tavares and his group.
12 **Q Did he tell you anything else about**
13 **the practice he had at that time about adding**
14 **cash to the paychecks?**
15 A It was to make up for lunch -- you
16 know, to pay them for their lunch hours. I
17 believe that's really what the extra cash was
18 for at that time.
19 **Q That's something that Sam told you at**
20 **the time?**
21 A Yes.
22 **Q Do you know if the workers were taking**
23 **a lunch hour off from work during the time that**
24 **Sam was handling the payroll?**
25 A Yes.

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1 **DAVID SAPERSTEIN**
2 A I could've covered one. I could've
3 gone to one garage and not gone to another or I
4 could've gone to all of them. There was no set
5 schedule.
6 **Q And how many were there at the time**
7 **all together that you were responsible for?**
8 A I think seven.
9 **Q Seven, okay. Generally, how long did**
10 **you spend at each one?**
11 A Could've been five minutes. Could've
12 been three hours.
13 **Q So it varied a lot?**
14 A Yeah.
15 **Q Do you recall specific instances back**
16 **then when you saw someone leaving or taking a**
17 **lunch hour?**
18 A Specifically, I remember once Jose
19 Suazo taking lunch hour specifically.
20 **Q Why does that stand out in your mind?**
21 A Because that particular day, I caught
22 a car in the garage with no ticket and no
23 sticker, and he wasn't there to explain it to
24 me.
25 **Q You found out?**

1 **DAVID SAPERSTEIN**
2 **Q What do you know about that?**
3 A That I witnessed workers taking --
4 leaving the garage to get lunch. Sometimes they
5 would come back with it and eat in their car, in
6 the office. I actually reprimanded an employee
7 for eating in a customer's car once. On a few
8 occasions, I've witnessed employees leaving --
9 not being in the garage while I was there and
10 coming back later, after -- you know, after
11 their lunch.
12 **Q This was during the time that Sam was**
13 **handling the payroll?**
14 A Yes.
15 **Q What was your work schedule at that**
16 **time in terms of visiting the various garages?**
17 A It varied. Some days I worked from
18 seven to three. Some days I worked from six to
19 six. Some days I worked from 4:00 a.m. to
20 8:00 p.m. It varied.
21 **Q How many days a week were you working**
22 **at that time?**
23 A Six.
24 **Q And how many garages did you cover in**
25 **a day?**

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1 **DAVID SAPERSTEIN**
2 A I had to wait for him to get back to
3 find out where he was.
4 **Q And he told you he was taking lunch?**
5 A Yes -- specifically, he said eating.
6 **Q Any other specific instances that you**
7 **recall?**
8 A No -- cancel that. The time that I
9 reprimanded the employee for eating in a
10 customer's car.
11 **Q What garage was that?**
12 A Castle.
13 **Q When did that happen, roughly?**
14 A Sometime in 2002 or 2003.
15 **Q Do you recall who the employee was?**
16 A No.
17 **Q When Sam was handling the payroll,**
18 **what garages did you cover? Which were the ones**
19 **that were operating that you covered?**
20 A Sage, Bien, Castle. Sam handled Ivy's
21 payroll for a very short time, so I did visit
22 Ivy every once in a while. That's it.
23 **Q Not 155?**
24 A Sam never handled the payroll for 155
25 or 145.

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1 **DAVID SAPERSTEIN**
2 **did employees continue to be paid partly in**
3 **cash?**
4 A Yes.
5 **Q How did you determine what cash**
6 **amounts each employee was supposed to get?**
7 A It was a net number based on their
8 hours worked plus one hour for lunch per shift.
9 **Q Did Jose tell you why he was paying**
10 **employees partly in cash?**
11 A No.
12 **Q Did you ever ask him?**
13 A My contact with Jose Tavares was very
14 limited.
15 **Q Did Sam ever tell you why, before you**
16 **took over the payroll, the workers were being**
17 **paid partly in cash?**
18 A Say that again.
19 **Q Did Sam ever tell you why the workers**
20 **were being paid partly in cash?**
21 A The cash was to make up for their
22 lunch hour that was deducted from the time
23 cards.
24 **Q Sam told you that?**
25 A Yes.

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1 **DAVID SAPERSTEIN**
2 **That was in some written form?**
3 A Yes.
4 **Q How often did Raj or Sam provide that**
5 **type of record?**
6 A Weekly.
7 **Q Weekly?**
8 A Yes.
9 **Q What did you do with those records**
10 **after you had utilized the information?**
11 A Depending on the period of time. At
12 one point it went back to Sam. Another point it
13 was just scanned into my computer and sits
14 there.
15 **Q Do you know what Sam did with those**
16 **records when they went back to him?**
17 A I believe he just put them in a box.
18 **Q Is that at the Second Avenue location**
19 **or somewhere else?**
20 A I believe Second Avenue.
21 **Q And when you scanned those records**
22 **into your computer, what happened to the paper**
23 **copies?**
24 A I believe I destroyed them.
25 **Q We talked about reports you got from**

1 **DAVID SAPERSTEIN**
2 **Q To your knowledge, was there a reason**
3 **why the lunch hour amounts were not included in**
4 **the paychecks?**
5 A You would have to ask Sam that.
6 **Q You don't know?**
7 A No.
8 **Q He never told you?**
9 A No.
10 **Q Did you ever ask him?**
11 A No.
12 **Q When you took over the payroll, what**
13 **was the process whereby paychecks were**
14 **generated?**
15 A Are you referring to when I started to
16 do it?
17 **Q When you started to do it?**
18 A I would get the hours from Raj and/or
19 Sam.
20 The hours included the one hour per
21 shift lunch, which I deducted from the check and
22 then added back in in the form of cash.
23 **Q When you got the hours from Raj, what**
24 **kind of information, what type of report --**
25 **withdrawn.**

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1 **DAVID SAPERSTEIN**
2 **Raj or Sam. What, if any, records did you**
3 **create in the payroll process? Did you generate**
4 **lists, spreadsheets?**
5 A Yes. Certain locations were all put
6 on one sheet, Castle, Sage, Bien and Ivy were
7 put on one sheet. The hours inclusive of the
8 one hour for lunch, the net pay and the amount
9 they received in cash were put on a report. At
10 some point, I don't know when, I added gross pay
11 to the reports. 145 and 155 had their own
12 report and Magic has its own report.
13 **Q Where is Magic located?**
14 A 121 and St. Nick.
15 **Q Were you responsible at any time**
16 **for -- withdrawn.**
17 **Have you discussed your testimony or**
18 **your prospective testimony for today with anyone**
19 **before coming here to the deposition?**
20 A No.
21 **Q Just so we're clear, I'm asking**
22 **whether you discussed your testimony or your**
23 **prospective testimony at any time before coming**
24 **to the deposition today?**
25 A My testimony, no.

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1 **DAVID SAPERSTEIN**
2 A Yes.
3 **Q Have you ever met or spoken with him**
4 **in person?**
5 A No.
6 **Q Christian Santos, do you know who that**
7 **is?**
8 A Yes.
9 **Q He is also an employee?**
10 A Was.
11 **Q Have you ever met or spoken with him**
12 **in person?**
13 A No.
14 **Q How about Jose Reyes, do you know who**
15 **that is?**
16 A Sounds like he was an employee; but
17 off the top of my head, I don't know.
18 MS. MEYERS: Rich, I think that's not
19 his first name.
20 **Q Jose De Arce Reyes?**
21 A Former employee.
22 **Q Have you ever met or spoken with him**
23 **in person?**
24 A No.
25 MR. BERNSTEIN: Let's take a short

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1 **DAVID SAPERSTEIN**
2 A Once the ADP program was up and
3 running, we discontinued getting checks from
4 Jose Tavares.
5 **Q But in terms of figuring out the cash**
6 **amount, how did you do that once you took over**
7 **the payroll?**
8 A We continued to pay the employees the
9 same -- in the same manner that Jose Tavares
10 did.
11 **Q So you began with a net amount and**
12 **then computed a cash amount in some way based on**
13 **that?**
14 A We began with a net amount and a net
15 check -- a net check to find out how much cash
16 needed to be added to come up to the original
17 net amount.
18 **Q Explain to me what you mean by the**
19 **original net amount.**
20 A Jose Tavares was paying his employees
21 a net amount. I don't remember what that number
22 is. But he paid a net amount. So rather than
23 to have disgruntled employees, we continued to
24 follow Jose's system. I knew how much net they
25 were supposed to get for a specific amount of

1 **DAVID SAPERSTEIN**
2 break here.
3 (Whereupon, a break was taken.)
4 BY MR. BERNSTEIN:
5 **Q At what point did you start working**
6 **with the information that you got from Jose**
7 **Tavares? I think you said you got a net number,**
8 **and then you worked out a cash number based on**
9 **that in some way. Do I understand that**
10 **correctly?**
11 A Jose Tavares paid some portion in cash
12 as well as check.
13 **Q Okay.**
14 A Whatever date that we started managing
15 145 and 155 is the date. I want to say May of
16 2003, but I'm not sure.
17 **Q But whatever date that was, that's**
18 **when you started utilizing information from Jose**
19 **Tavares in terms of a net number that you worked**
20 **into a cash number in some way?**
21 A Me?
22 **Q Yes. Is that something you did?**
23 A Yes.
24 **Q And did you continue to go through**
25 **that process after you took over the payroll?**

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1 **DAVID SAPERSTEIN**
2 hours.
3 **Q I see.**
4 A So in order to figure out the gross
5 numbers never came into play other than to make
6 sure that they got paid minimum wage for their
7 time worked. Minimum wage plus overtime.
8 **Q And the net amount for a certain**
9 **amount of hours is net of payroll withholding?**
10 A It's what they actually walked home
11 with.
12 **Q Cash plus check?**
13 A Cash plus check.
14 **Q I see. Do you know if the amount you**
15 **got from Jose Tavares varied if the amount of**
16 **hours that an employee worked varied?**
17 A From Jose Tavares, I have no idea what
18 he did if someone worked less hours than they
19 were scheduled.
20 **Q How about once you started taking over**
21 **the payroll, you still started with a net amount**
22 **for a certain number of hours?**
23 A If they worked -- they got paid for
24 the amount of hours they worked plus one hour
25 per shift for lunch.

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DAVID SAPERSTEIN

Q When you say they got paid for the number of hours they worked plus, did the amount that they were paid for hours worked vary when the number of hours varied?

A Yes.

Q Higher number if the number of hours was higher and so forth?

A Yes.

Q Has that system changed in any way since you started -- since you took over the payroll back in 2003?

A Yes.

Q How has it changed?

A Currently, we do not pay many people in cash and the hours that they worked inclusive of the lunch hour is in the check.

Q Are there any people who are still paid in cash?

A A few.

Q Which ones are they?

A Forgive me if I don't say everybody.

Q Well, I don't know if it's just a random group of names or there's -- it's a particular garage or something else?

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DAVID SAPERSTEIN

A It's usual the same employees every week. Occasionally it changes; but for the most part, it's the same.

Q What accounts for the fact that those people are still on the previous system?

A Sam's decision.

Q Did Sam ever explain to you his basis for keeping them on the same system?

A It's not the same system.

Q Okay.

A I'm just going to use employee A worked 55 hours plus five hours for lunch.

Q Okay.

A Employee A got a check for 40 hours plus 20 overtime plus some cash. It had nothing to do with his lunch or how much he got. He would just -- Sam decided that he wanted to give him extra. That's current.

Q Have there been any other changes besides what you just told me?

A Other than the minimum wage changes, no.

Q So if I understand correctly, there are now some employees that are paid exclusively

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DAVID SAPERSTEIN

by check?

A Most employees are paid exclusively by checks.

Q And when did that begin to be done?

A I think sometime in 2006.

Q Who made the decision to do that?

A Sam.

Q What did he tell you about that?

A He said that he wanted -- he no longer wanted to pay cash to most of the employees to change the way people -- change the way checks were being cut to include hours worked and lunch.

Q Did he tell you why he wanted to make that change?

A No.

Q Did you ask him?

A Yeah.

Q What did he say about that?

A Didn't get an answer.

Q He didn't say anything?

A He went onto something else, and I never returned to the question.

Q For the employees that are now paid

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DAVID SAPERSTEIN

exclusively by check, what is the process whereby their paycheck is generated?

A From beginning to end?

Q Yes. Generally describe the process.

A The process is generally the same. Raj or Sam faxes me a handwritten sheet that has their hours on it, either by location or group of locations, and I enter into ADP's payroll system the amount of hours, 40 hours plus whatever additional. Next day I get a check, and somehow I get it to Raj.

Q Let's look at Exhibit 5. (Handing.) Paragraph can you tell me what time of record that is? Is that something you recognize?

A Yes.

Q What is it?

A It's generated from ADP PC Payroll for Windows. It is an earnings statement from the beginning of when Angelo Pena -- let me back up a little. It is an itemization of every check that Angelo Pena received from SP Payroll. Includes gross pay and net pay and week ending and so forth.

Q Is it a type of record that SP Payroll

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1 **DAVID SAPERSTEIN**
2 **keeps in the normal course of business or was it**
3 **created for the lawsuit or something else?**
4 A This particular record was created for
5 the lawsuit.
6 **Q Is it a summary of amounts that are on**
7 **the actual paystubs?**
8 A More information appears on the
9 paystubs than does in this report.
10 **Q But it does itemize the gross and net?**
11 A That's correct.
12 **Q Then if we look at Exhibit 6.**
13 **(Handing.)**
14 **Is that a paystub for Mr. Pena or a**
15 **copy?**
16 A It's a reproduction of a paystub
17 generated by PC Payroll for Windows.
18 **Q This says it's for pay date August**
19 **3rd, 2007, period ending July 29th, '07. Do**
20 **you see that?**
21 A Yes.
22 **Q Do you know if at that time Mr. Pena**
23 **was being paid exclusively by check?**
24 A Yes.
25 **Q He was?**

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1 **DAVID SAPERSTEIN**
2 **Q Do you know if any of the workers were**
3 **ever asked to give a receipt for the cash?**
4 A Let me actually back up on that one.
5 Edison Alvarez actually gave Sam some form of
6 acknowledgment that he received cash.
7 **Q Aside from that, are you aware of any**
8 **kind of cash or acknowledgment that workers gave**
9 **or were asked to give?**
10 A No.
11 **Q When you were supervisor, did**
12 **employees who worked the same number of hours in**
13 **a week get the same amount of cash? For**
14 **example, if there were two employees that**
15 **worked, say, 72 hours, they both worked 72 hours**
16 **in a given week, did they get the same amount of**
17 **cash?**
18 A I don't know. I wasn't doing payroll
19 at that time.
20 **Q What about when you started doing**
21 **payroll?**
22 A It depended. Since their pays were
23 based on net, it depended on how many
24 deductions. If their nets were the same, their
25 pay was the same.

1 **DAVID SAPERSTEIN**
2 A Yes.
3 **Q When you were a supervisor, did you**
4 **personally hand out the pay to the workers?**
5 A Rare occasions, but yes.
6 **Q When you were a supervisor, who**
7 **normally did that?**
8 A Raj.
9 **Q On what types of occasions did you do**
10 **that? What were the rare occasions,**
11 **circumstances?**
12 A If Raj was sick, if Raj was on
13 vacation or if I just happened to be going there
14 for another reason.
15 **Q While you were supervisor, did the**
16 **workers -- did any of the workers give a written**
17 **receipt for the cash?**
18 A Not that I'm aware of, no.
19 **Q Do you know if Raj ever gotten written**
20 **receipts for cash?**
21 A Not that I'm aware of.
22 **Q And how about after you took over the**
23 **payroll, did workers ever provide written**
24 **receipts for cash that they got?**
25 A Not that I'm aware of.

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1 **DAVID SAPERSTEIN**
2 **Q As part of your job, do you look at or**
3 **go through time cards, the time cards**
4 **themselves?**
5 MS. MEYERS: Objection. When?
6 MR. BERNSTEIN: At any time.
7 A It doesn't really matter, no. Let me
8 back up. I occasionally glance at them. If I'm
9 at a location, I might just glance just to make
10 sure they're being used.
11 **Q When you say to make sure they're**
12 **being used, you mean that the employees --**
13 A Are punching in and out.
14 **Q Have you found times when employees**
15 **are not punching in and out every time they're**
16 **supposed to?**
17 A Occasionally. They also refused to
18 punch in and out for lunch when we attempted to
19 get them to do that.
20 **Q Okay. We'll get to that.**
21 A Okay.
22 **Q Occasionally, if I understand you**
23 **correctly, there are missing punch-ins or**
24 **punch-outs that you've seen?**
25 A Yes.

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1 DAVID SAPERSTEIN
2 **Q I should say time cards that you've**
3 **seen with a missing punch-in or punch-out time?**
4 A Yes.
5 **Q When the punch-in or punch out-time is**
6 **missing, how, if at all, are the employees'**
7 **hours figured for that day?**
8 A It was up to Raj. Raj was the one
9 that knew when they were coming and going. He
10 was the one that determined what time they got
11 there and what time they left.
12 **Q Now, you said that employees refused**
13 **to punch in and out for a lunch break; am I**
14 **correct?**
15 A Refused might have been a wrong word.
16 **Q Okay. They didn't do it?**
17 A Unable to do it might be a better
18 choice of words.
19 **Q Tell me what you remember about that.**
20 A At some point, I had requested Raj to
21 get the employees to punch in and out whenever
22 they left the garage.
23 **Q Not just for lunch but whatever?**
24 A My choice of words was "whatever," but
25 it meant lunch, and Raj understood that. And we

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1 DAVID SAPERSTEIN
2 **Q Was that something you asked Raj to**
3 **do?**
4 A Yes.
5 **Q When did that happen?**
6 A It was more than one request, and they
7 were made sometime in the early part -- early
8 and mid part of 2004.
9 **Q And what caused you to ask Raj to do**
10 **that?**
11 A The time cards were not reflecting
12 that they were going out, so I needed -- I
13 needed that to happen.
14 **Q And how do you know that the time**
15 **cards were not reflecting that?**
16 A Raj told me.
17 **Q What did he tell you about that?**
18 A That after the first time I had asked
19 him to get them to punch in and out for when
20 they left the garage, I asked him if they were
21 doing it, he said no. After the second time I
22 asked him to do it, I asked him again, the same
23 question, he said no.
24 **Q Do you know if Raj did anything**
25 **besides asking the workers to punch in and out**

1 DAVID SAPERSTEIN
2 just couldn't -- could not get them to do it.
3 They either forgot, they didn't want to do it;
4 for whatever reason, they did not do it.
5 **Q Do you recall when you --**
6 MR. BERNSTEIN: Can you repeat the
7 last answer and question.
8 (Whereupon, the requested portion was
9 read back by the court reporter: Q, tell me
10 what you remember about that? A, at some
11 point I had requested Raj to get the
12 employees to punch in and out whenever they
13 left the garage. Q, Not just for lunch but
14 whatever? A, My choice of words was
15 'whatever,' but it meant lunch, and Raj
16 understood that. And we just couldn't --
17 could not get them to do it. They either
18 forgot, they didn't want to do it; for
19 whatever reason, they did not do it.)
20 BY MR. BERNSTEIN:
21 **Q How were workers told to punch in and**
22 **out for lunch?**
23 A Verbally.
24 **Q By you or Raj?**
25 A By Raj.

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1 DAVID SAPERSTEIN
2 **for lunch? Did he take any other steps to see**
3 **to it that they did that?**
4 A I don't know.
5 **Q Did you ask him to take any other**
6 **steps besides telling the workers to punch in**
7 **and out for lunch?**
8 A I did tell him that if they don't do
9 it, they're going to receive reprimands for it.
10 I don't know whether he told them that or not.
11 **Q Do you know if anyone was ever**
12 **reprimanded for not punching in and out for**
13 **lunch?**
14 A No official letter was written.
15 **Q How about unofficially?**
16 A It wouldn't have come from me, it
17 would've come from Raj.
18 **Q So you don't know one way or the**
19 **other?**
20 A No.
21 **Q Do you know if there are any time**
22 **cards that show a worker punching in or out for**
23 **a lunch hour?**
24 A I don't know.
25 **Q Let's look at Exhibit 9. (Handing.)**

1 DAVID SAPERSTEIN

2 I think my question is, what type of
3 record are we looking at here?

4 A These documents are previous to when I
5 was doing payroll, but are similar to the ones
6 that I would receive from Raj and/or Sam, or
7 some of them are similar.

8 Q Do you have one that you can tell me
9 is similar?

10 A The second page. The one dated
11 May 8th, '03.

12 Q Okay.

13 A It's similar to what I currently get.

14 Q Similar in that there's a list of
15 employees for various garages with days and
16 hours worked?

17 A Correct.

18 Q And then the ones you now get also
19 have numbers added onto them by Sam?

20 A Some do, some don't.

21 Q Which ones do and which ones don't?
22 Does it vary --

23 A It varies.

24 Q -- by garage or something else?

25 A No. It depends on whether Sam happens

1 DAVID SAPERSTEIN

2 Q Do you know on what basis he does that
3 or what basis you do it when you do it?

4 A If an employee worked 12 hours five
5 days a week, I would basically do eight plus
6 four for every 12 hours, and it would, you
7 know -- it would kind of add up to 40 plus or
8 whatever. Forty plus 20.

9 Q Let's look at Exhibit 12. (Handing.)
10 Quickly, are there reports in here
11 from the time when you were handling the
12 payroll?

13 A Yes.

14 Q Can you give me an example?

15 A Let me back up. At this -- let's just
16 go with the first page. 8-25-03 to 9-1-03, I
17 was only handling the check portion of the
18 payroll.

19 Q So in that instance, how did you
20 utilize the information from this report?

21 A In this particular instance?

22 Q Yes.

23 A Let's take in Bien, Felix, he got on
24 his check 40 hours regular, 26 hours overtime at
25 whatever the minimum wage rate was.

1 DAVID SAPERSTEIN

2 to be in time to write these, like eight plus
3 four. If he happens in time to write it in,
4 then he does that. If he's not in in time, then
5 I have to do it on my own.

6 Q How do you do it on your own?

7 A It's more or less arbitrary. This
8 eight plus four means he worked 12 hours. At
9 this particular garage, the allotment of regular
10 time -- we're talking about Persio. At this
11 particular garage, the allotment is eight
12 regular hours, four overtime hours at this
13 particular garage. And then somewhere on there
14 there's probably 32 hours plus whatever extra
15 overtime you worked underneath it. At Sage, he
16 worked 32 plus 16, which brings his 40 regular,
17 20 overtime.

18 Q When you say allotment, I'm not sure
19 what you mean by that.

20 A It really has nothing to do with the
21 employee. It's how the labor cost is
22 distributed from one garage to the other because
23 he worked in two separate garages.

24 Q Who makes that distribution?

25 A In this particular case, Sam did.

1 DAVID SAPERSTEIN

2 Q Is there an example in here of when
3 you were handling both the check and the cash
4 portion?

5 A Let's go to the last one, since it's
6 probably the last date.

7 Q The last one?

8 A Let me see what that date is. We
9 can't read that date, so let's go to the one
10 before the last one.

11 Q Okay.

12 A I believe I was handling both portions
13 at this point.

14 Q Okay. And in that instance, how did
15 you utilize the information that you were given?

16 A In this particular one, Sam figured
17 out the distribution of regular and overtime
18 pays. Let's take Sammy, for instance.

19 Q The first one?

20 A The first one. Forty hours regular,
21 26 overtime is what his check was. And I'm
22 guessing that at some point I put cash in his
23 envelope as well.

24 Q And what method did you use to arrive
25 at the cash amount?

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1 **DAVID SAPERSTEIN**
2 A I added in six hours for lunch because
3 six days, six hours.
4 **Q And we know it's six because -- well,**
5 **it says six days?**
6 A It says six.
7 **Q And 72 hours?**
8 A Yeah.
9 **Q And then Sam wrote 40 plus 26?**
10 A Yes.
11 **Q Meaning the check amount was for 40**
12 **regular and 26 overtime hours?**
13 A Yes.
14 **Q Let's look at Exhibit 13. (Handing.)**
15 **Are these pages, or most of them,**
16 **examples of the grid that you said you got from**
17 **Raj at times?**
18 A Yes. There are also additional pages
19 in here with the hours that I would get from Raj
20 and/or Sam. In this particular case, I did the
21 distribution of regular and overtime hours on my
22 own.
23 **Q What's the date on that?**
24 MS. MEYERS: Page number?
25 THE WITNESS: Looks like 17.

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1 **DAVID SAPERSTEIN**
2 overtime.
3 **Q How does the grid format show the**
4 **number of hours per shift that people were**
5 **working?**
6 A Well, let's take the first page, Bien.
7 **Q Sure.**
8 A Sammy Gerardo, Monday, eight hours.
9 Tuesday, eight hours and so on. It specifically
10 says in this particular day how many hours they
11 worked in that day.
12 **Q I see. That's a piece of information**
13 **that's not on the list form; is that right?**
14 A That's correct.
15 **Q How did having the information in the**
16 **grid help you to control overtime?**
17 A It just made it easier for me to see
18 where people were working 12 hours a day or 10
19 hours a day or eight hours a day, and it helped
20 me, you know -- it helped me advise Sam that we
21 need to cut down on overtime costs. And if it
22 means to hire an extra man to work less
23 overtime, that's what it means doing.
24 **Q Next let's look at Exhibit 14.**
25 **(Handing.)**

1 **DAVID SAPERSTEIN**
2 BY MR. BERNSTEIN:
3 **Q Is there a date on the page you just**
4 **looked at?**
5 A 1-14 to 1-20-2008, and it's the sixth
6 page.
7 **Q So Raj sometimes gave you information**
8 **in a grid form and sometimes in the list form**
9 **that we've looked at; is that right?**
10 A Currently I get them in both grid form
11 and list form.
12 **Q For the same workers or --**
13 A Yes.
14 **Q When did Raj start providing the grid**
15 **type format?**
16 A I believe in 2007, but I'm not sure.
17 **Q And how did it come about that he**
18 **started doing that? Was it his idea or somebody**
19 **else's to do it?**
20 A No, it was my idea.
21 **Q And what was your basis for asking him**
22 **to do that?**
23 A I needed to see how many hours per
24 shift the employees were working, because at
25 this time we were trying to control our

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1 **DAVID SAPERSTEIN**
2 **Do you recognize that -- I'm just**
3 **focusing on the first page. Do you recognize**
4 **that document --**
5 A Yes.
6 **Q -- or type of document?**
7 A Yes.
8 **Q What is it?**
9 A It's a document that I generated to
10 figure out how much cash to give the employees.
11 **Q Can you tell me what information is in**
12 **the numerical columns? I see there's a list of**
13 **garages by the list of workers' names.**
14 A Okay.
15 **Q You have total net pay and so forth.**
16 A So total net pay is the total net
17 they're supposed to be receiving for the hours
18 worked plus the lunch hour in cash and check.
19 Total hours worked is the total hours worked
20 inclusive of the lunch hour. The net check is
21 how much the check is net for this location.
22 17.21 is the cash amount. Seventeen, it's
23 rounded off.
24 **Q Let's go back to total net pay.**
25 A Uh-huh.

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1 **DAVID SAPERSTEIN**
2 A Right.
3 **Q Why don't we just focus on the first**
4 **page here.**
5 A Okay.
6 **Q Is it a report that you prepared?**
7 A Yes.
8 **Q Sometime around September 10th of**
9 **'06?**
10 A Yes.
11 **Q And what type of report is this?**
12 A It's the same as the report we were
13 just discussing. It gives total net pay. The
14 actual net --
15 **Q It's got an additional column, doesn't**
16 **it?**
17 A Yeah. It gives the total hours worked
18 gross check, net check. I'm not sure what this
19 net pay column is. Previous to the minimum wage
20 going up, that's what their net pay would've
21 been.
22 **Q I see.**
23 A So it's just a reference column for
24 me. In this particular case, no additional cash
25 was given and this is at a period of time when

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1 **DAVID SAPERSTEIN**
2 **Q The report?**
3 A Yes. That's inclusive of their lunch
4 hour.
5 **Q Then the gross check, did that come**
6 **from ADP or actually --**
7 A Do you want to pick Franklin Santana,
8 since it's one location?
9 **Q Yes. Forget Persio. Let's look at**
10 **Franklin Santana. Sixty hours?**
11 A Yeah. That's 55 that he worked and
12 five lunch.
13 **Q Because we know that 60 hours is five**
14 **days?**
15 A Right.
16 **Q And that's something you could get**
17 **from Raj's report?**
18 A Yes.
19 **Q So we're going to divide something by**
20 **five, is that the next step here?**
21 A No, here, there is no other step
22 because we are no longer adding anything in
23 cash. They're getting paid straight minimum
24 wage, whatever applicable overtime and that's
25 it.

1 **DAVID SAPERSTEIN**
2 we stopped paying for employees' lunch.
3 **Q When did you stop paying for the**
4 **employees' lunch?**
5 A It was sometime in 2006, most probably
6 very early, when I believe minimum wage went up
7 at this point to 6.75.
8 **Q Is that -- and who made the decision**
9 **to stop paying for employees' lunch?**
10 A Sam.
11 **Q Is that something he told you?**
12 A Yes.
13 **Q Did he tell you why he made that**
14 **decision?**
15 A No.
16 **Q Did you ever ask him?**
17 A No.
18 **Q Did anyone else ever tell you why Sam**
19 **made that decision?**
20 A No.
21 **Q If we look at Persio there, total**
22 **hours worked 36, that's a number that you got**
23 **from the report from Raj or the grid or**
24 **something like that?**
25 A The report.

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1 **DAVID SAPERSTEIN**
2 **Q Gross check, that comes from ADP?**
3 A In this particular case, it would
4 appear on ADP reports plus it would appear on
5 the employee's paystub.
6 **Q And net check, same thing?**
7 A Same thing. It would appear on ADP
8 reports, and it would appear on the employee's
9 actual check and paystub.
10 **Q Then what about the 364 number, where**
11 **does that come from, total net pay?**
12 A That's how much his total net pay was.
13 **Q It's the same as the net check?**
14 A Yes.
15 **Q Except for --**
16 A Give or take a couple of cents. The
17 total net pay for this particular report -- at
18 this particular time, the total net pay and net
19 pay reports are functions of accounting, not
20 payroll. Not figuring out how much to give
21 anybody in cash. Because at this particular
22 time, with the exception of two people, there
23 was no cash.
24 **Q What was the purpose of creating this**
25 **report, since you don't need to figure out the**

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DAVID SAPERSTEIN
cash numbers at this point?

A It just carried over. I just never changed the format of the report because there was no reason to. But to allocate funds properly, we still needed to know the total net, total net pay.

Q And that's why you have total columns for each garage?

A Yes.

Q Now, the two exceptions, are those the ones that are shaded in?

A No.

Q What were the exceptions?

A Juan Lorenzo and Jose Suazo.

Q Where are they?

A Sage.

Q Why are they getting cash amounts?

A Sam likes them.

Q A simple answer to a simple question. So Sam told you what amount to give them?

A Yes.

Q What about the ones that are shaded in, that's a different situation?

A I believe this is an error, that the

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DAVID SAPERSTEIN

shading is there because it bears no relevance to anything. Angelo Pena always got paid straight.

Q Down at the bottom, it says shaded employees are gross. Does that -- what does that mean?

A One or two periods of time there were a couple of employees that their pay was not based on net, it was based on gross. And this particular week none of those employees actually worked at these garages.

Q So these two -- actually, it's Angelo Pena at two places?

A No, my error. When Angelo Pena was hired, he was hired at a gross number. So that's why his are shaded to reflect that he is -- we did not inherit him from Jose.

Q So when he was hired -- when you say he was hired at a gross number, can you explain to me --

A Whatever minimum wage was.

MR. BERNSTEIN: I need to take a short lunch break.

(Whereupon, a lunch break was taken.)

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DAVID SAPERSTEIN

MR. BERNSTEIN: Back on the record.
 BY MR. BERNSTEIN:

Q Mr. Saperstein, you understand you're still under oath?

A Yes.

Q Before Sam decided to stop paying for lunch hour -- I think you said he decided at some point to stop paying the employees for lunch hour; is that right?

A Yes.

Q Up to that point, the employees were being paid in cash for lunch hour?

A Yes.

Q Once the employees were no longer being paid in cash for their lunch hour, was there some way they were paid for lunch hour? Was it taken into account in their checks at that point?

A No. It was taken into account in their checks starting in 2007. Let me just clarify that.

Q When did that begin?

A January, February 07.

Q And how was that done?

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DAVID SAPERSTEIN

A It was just straight in their check.

Q So there was a period of time when it was not in their check, like in '06?

A In -- when minimum wage went up to, I believe, 6.75, which was 06, I believe, that's when Sam decided not to supplement their checks with cash for lunch.

Q And at that point -- okay. And then in '07 he started supplementing their checks again?

A We just -- it's not that we started supplementing their checks. They just received -- the hours that they were -- not the hours. If they worked a five-day work week, and they worked 55 hours. We just added the five extra hours for lunch into the total, and it was paid in the check. So they would've gotten 40 plus 20.

Q So there was no subtraction being made?

A That's correct.

Q When the employees were being paid for lunch in cash, do you know if they were told that the cash was for their lunch hour?

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1 **DAVID SAPERSTEIN**
2 A I don't know.
3 **Q I think you said starting in '07, they**
4 **were paid through their checks for lunch hour?**
5 A Correct.
6 **Q Do you know if any of the workers were**
7 **told at that point that there was some amount in**
8 **their checks for lunch hour?**
9 A I don't know.
10 **Q Let's look at Exhibit 10. (Handing.)**
11 **Do you recognize those pages?**
12 A Yes.
13 **Q What are they?**
14 A They're notification -- they're
15 notification and clarifications so the employees
16 understood that they had to -- that they were
17 going to take a break at their own discretion
18 and that it would be deducted from their -- from
19 their time card.
20 **Q Is this a notice that you prepared?**
21 A Yes.
22 **Q And did you have someone translate it**
23 **into Spanish for the second paragraph?**
24 A Yes.
25 **Q Who made the translations for you?**

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1 **DAVID SAPERSTEIN**
2 **Q Who made the decision to give the**
3 **employees this type of notice?**
4 A It was my idea to give the employees
5 the notice and Sam okayed it.
6 **Q Had you been told at any time up to**
7 **when you prepared this notice that employees**
8 **were not taking meal breaks?**
9 A No.
10 **Q Did anyone ever complain to you or did**
11 **you learn of any complaints after this point**
12 **that employees were not taking meal breaks?**
13 A No.
14 **Q Did it ever come to your attention**
15 **that employees, for whatever reason, were**
16 **starting to work and working for a period of**
17 **time before they punched in?**
18 A I'm sorry?
19 **Q Did you ever learn that it was**
20 **happening, did anyone ever tell you that**
21 **employees were not punching in right when they**
22 **started working? That they were asked to wait**
23 **and punch in after working for some time?**
24 A That they were asked to wait?
25 **Q Or that they did wait?**

1 **DAVID SAPERSTEIN**
2 A I think it was my ex-fiance at the
3 time. I don't remember.
4 **Q When did you prepare this?**
5 A Sometime in 2004. Late portion of
6 2004.
7 **Q What caused you to do that?**
8 A We attempted to have the employees
9 punch in and out on the time cards. But as I
10 said before, they, for whatever reason, they did
11 not do it. So this was the next best thing that
12 they understood what was going on.
13 **Q This was a substitute for their**
14 **punching in and out?**
15 A Yes.
16 **Q Were you present when any of these**
17 **were given to the employees to sign?**
18 A No.
19 **Q Do you know who did give them to the**
20 **employees to sign?**
21 A I gave them to Raj with the assistance
22 of Christian Cherrez, C-H-E-R-R-E-Z, who speaks
23 fluent English and Spanish, with the
24 instructions to explain the policy to those
25 signing it.

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1 **DAVID SAPERSTEIN**
2 A No.
3 **Q Neither of those?**
4 A No.
5 **Q Okay. Did anyone ever complain to you**
6 **that they had been sent to work at a different**
7 **garage from the one they were usually assigned**
8 **to and they were not being paid for the time at**
9 **the other garage?**
10 A There were isolated incidents where
11 either Raj forgot to put their hours on the
12 sheet or I did not pick it up. But for whatever
13 reason, the hours were missed. Raj would
14 receive the complaint and the hours would be
15 added in the following week.
16 **Q Do you recall any specific instances?**
17 A I don't recall specific instances, but
18 I know it happened once -- more than once with
19 Angelo Pena; and it happened, I believe, once
20 with Franklin Santana. It happened once with
21 one other employee. I just don't remember his
22 name.
23 **Q What records, if any, would show the**
24 **missed hours being added in at a later time?**
25 A On the following week's paystub, there

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DAVID SAPERSTEIN

A 2006, maybe.

Q You're asking me?

A I'm taking a guess. It's somewhere in 2006.

Q Is it something that you prepared?

A Yes. It's actually something I prepared 20 years ago. I just kind of used a variation of it.

Q Is it something that you were asked to start distributing to the employees or have distributed to the employees?

A Did somebody ask me to do it?

Q Yes. How did it come about that the**Rules and Procedures was given out to the employees starting sometime around 2006? What started that?**

A We had been involved in an unemployment hearing, and we lost the hearing because I couldn't prove the employee knew not to wash cars while on a shift without permission. So because of that, I started to, at random times, give out and update a Rules and Procedures pamphlet.

Q Was there a problem with employees not

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DAVID SAPERSTEIN**taking lunch breaks at that time?**

A Not taking lunch breaks?

Q Right.

A They always took lunch breaks.

Q And again, what's your basis for saying that?

A I personally witnessed a couple. I've been in the business for over 20 years. I know that employees do not spend their entire time in the garage.

MR. BERNSTEIN: Off the record.

(Whereupon, a discussion was held off the record.)

MR. BERNSTEIN: Back on the record.

BY MR. BERNSTEIN:

Q Have there been times when the workers were taking lunch breaks and they were being paid for their lunch hour?

A Yes.

Q Who made the decision to pay them for lunch hour?

A Sam.

Q Is that something you discussed with him?

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DAVID SAPERSTEIN

A No.

Q Did you ever ask him why he was doing that?

A No.

Q Did anyone ever tell you why Sam had decided to do things that way?

A No.

MR. BERNSTEIN: Off the record.

(Whereupon, a discussion was held off the record.)

BY MR. BERNSTEIN:

Q At the point where the employees were no longer being paid for their lunch hour -- because I think you said there came a time when Sam decided to no longer pay the workers for their lunch hour?

A Yes.

Q Okay. Do you know whether the employees continued to take a lunch hour or not?

A Yes.

Q What do you know about that?

A They continued to take their lunch hour, same as they did before.

Q And how do you know that?

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DAVID SAPERSTEIN

A I've witnessed it on a couple of occasions.

Q Other than that, do you have any basis for your answer?

A Other than witnessing it?

Q Yes.

A Raj would tell me, but that's about it.

Q What did Raj tell you?

A On one occasion, I remember he was in a location and he had to wait until the guy came back before he left.

Q And Raj told you that whoever it was was on a lunch break?

A He told me a break. He didn't specifically say lunch.

Q Was there a practice or a policy whereby someone would cover for an employee who was taking a break, a lunch break?

A If there were two men on duty, it was very simple. The second man -- one man would cover for the other. One garage has -- is connected to another garage. So when one man goes out, the attendant from one garage covers

EXHIBIT C

1 Podolak - 6/11/08

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 - - - - -

5 ANGELO PENA, ROLANDO ROJAS,
6 JOSE DIROCHE, and FRANKLIN SANTANA,
7 individually and on behalf of others
8 similarly situated,q

9 Plaintiffs,

10 vs.

11 SP PAYROLL, INC., NICHOLAS PARKING, CORP.,
12 IVY PARKING CORP., BIENVENIDO, LLC,
13 CASTLE PARKING CORP., SAGE PARKING CORP.,
14 and SAM PODOLAK,

15 Defendants.

16 - - - - -

17 No. 07 CV 7013

18
19
20
21
22 DEPOSITION OF SAM PODOLAK
23 New York, New York
24 Wednesday, June 11, 2008
25

Reported by:

Joseph V. Connolly

JOB NO. 16899

Podolak - 6/11/08

back, please?

(The requested material was read aloud.)

Q. And to whom are the bills submitted?

A. The bills are submitted to the individual garages and then those garages have to pay SP Payroll.

Q. Is there a particular individual that the bills go to at the particular garages?

A. The bills go to me and I write the checks from the garages into SP Payroll.

MR. BERNSTEIN: Would you read that back, please?

(The requested material was read aloud.)

Q. How frequently are the bills for the garages created?

A. On a monthly basis, once a month.

Q. What information is contained in the bills?

A. A week-to-week breakdown of the actual labor costs, which, I guess, come off the ADP sheets and then a surcharge on top of that so SP Payroll has money to operate.

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Q. What are the ADP sheets that you just referred to?

A. We deal with ADP and all the checks are generated by them. And, you know, everything is computerized.

Q. What checks are generated by ADP?

A. The mens' salary. The men who are employees of SP Payroll gets checks on a weekly basis and that's all generated from the company, SP Payroll.

Q. Are there any employees who are not paid through ADP, employees of any of the garages?

A. Everything you have listed, everyone, you know, no.

I would like to make a correction.

Q. Sure.

A. 9495 Parking Corp. is a separate entity and there's a separate account for that garage alone, with ADP. Those men are not part of SP Payroll.

It's a union shop, so that's the reason for it being a separate entity.

Q. Do you know when Ivy started operating?

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A. I don't recall.

Q. But it was sometime before 2002 or 2003?

A. Yes.

Q. What payroll functions did you perform for Ivy before Mr. Saperstein was hired?

A. The supervisor would provide a list of the hours worked and then the men would be paid, based on whatever he wrote.

Q. Who was the supervisor at that time?

A. Rajesh Kissoon, R-A-J-E-S-H, K-I-S-S-O-O-N.

Q. And how were the workers paid, check, cash, some combination, something else?

A. There was a combination.

Q. How was it decided what amounts would be paid in check and what amounts would be paid in cash?

A. This is a long time ago, so I can only tell you what I think was done. I'm not one hundred percent sure.

This is a company that I inherited from a previous operator, so I decided to pay the men exactly the way the previous operator paid

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them.

They got paid for their regular hours, time and a-half for the overtime and some cash for their lunch hour.

That's to the best of my recollection.

Q. And if I understand correctly, that was the method that the previous owner had used?

A. The previously operator.

Q. The previously operator?

A. Yes.

Q. And who was the previous operator?

A. Jose Tavares.

Q. Did you ever discuss that method of payment with Mr. Tavares?

A. I don't understand the question.

MR. BERNSTEIN: Well, let me try to clarify it.

Q. You described the method of payment that you said you inherited from the previous operator.

A. Huh-huh.

Q. Mr. Tavares.

Did you ever talk with him about that

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1 Podolak - 6/11/08
 2 Do you see that?
 3 A. Yes.
 4 Q. Okay. What information is recorded
 5 on this first page here?
 6 A. How many days the men worked and how
 7 much cash they got, in addition to their check.
 8 Q. What - - what are the cash numbers
 9 here?
 10 Like if you can just give me an
 11 example?
 12 A. Well, they got a check, plus this
 13 amount of cash that's indicated here.
 14 Q. Well, if I look at the first - -
 15 you'll have to forgive me, I'm kind of in first
 16 grade here - - but if we look at the first name,
 17 which is "Sammy"?
 18 A. Huh-huh.
 19 Q. What does the "6" mean, do you know?
 20 A. He worked 6 days.
 21 Q. Okay. And then it says "70."
 22 A. He was given 70 in cash, in addition
 23 to his check.
 24 Q. And Felix, it says he worked 6 days?
 25 A. Six days.

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1 Podolak - 6/11/08
 2 Q. That week; is that right?
 3 A. Correct.
 4 Q. And who determined what amount of
 5 cash each person was to get?
 6 A. Raj and myself.
 7 Q. And how did you decide that?
 8 A. I don't recall how we did this. But
 9 it was certainly based on the amount of hours they
 10 worked and it probably was a combination of their
 11 check and cash to equal minimum pay standard for
 12 regular time and time and a-half for overtime.
 13 Q. When you say "it probably was," can
 14 you tell me what you base that on?
 15 A. Well, just thinking about how we did
 16 things in those days, I believe that's what we did.
 17 Q. Do you recall ever discussing that
 18 with Raj?
 19 A. I don't recall a specific conversa-
 20 tion with Raj over that issue.
 21 Q. Do you recall anything generally
 22 about what Raj might have said to you or you might
 23 have said to Raj about that issue?
 24 A. Well, I may have discussed it with
 25 him and I probably did the computations myself, I

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1 Podolak - 6/11/08
 2 Q. And - -
 3 A. Eighty, in addition to his cash.
 4 Q. His cash?
 5 A. Check. Check, rather.
 6 Q. And then the "120" that's off to the
 7 side there, can you tell me what that represents?
 8 A. That's all the numbers added up.
 9 Q. Well, it wouldn't be 70, 80, 30, 10?
 10 A. It says "minus 70," at the bottom.
 11 Q. Oh, I see.
 12 A. Which comes to 120.
 13 Q. And is that where it says "70 Raj"?
 14 A. Yes, it says "70, minus Raj."
 15 Q. Seventy minus.
 16 And what does that represent?
 17 A. Some how he described \$70.00, I don't
 18 remember for what.
 19 Maybe it was a loan.
 20 Q. I see.
 21 A. I don't know what it represents.
 22 Q. I see. So, the numbers that each - -
 23 opposite each name is the amount they got in cash -
 24 -
 25 A. Correct.

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1 Podolak - 6/11/08
 2 would think, and maybe he had some input on some-
 3 thing.
 4 But that's it.
 5 Q. Well, say for Felix, the second
 6 person that's listed up at the upper left there - -
 7 and this is - -
 8 A. Okay.
 9 Q. Is that Bienvenido?
 10 A. Yes.
 11 Q. Okay. How would you arrive at the 80
 12 there?
 13 What was the process?
 14 A. Probably he worked - -
 15 MS. MEYERS: If you recall?
 16 MR. BERNSTEIN: I'm sorry.
 17 MS. MEYERS: I said, if he recalls.
 18 I don't want him guessing.
 19 THE WITNESS: Yes.
 20 A. Other than - -
 21 MR. BERNSTEIN: Let me just make sure
 22 that you understand.
 23 Q. Unless I say differently, all of my
 24 questions are directed to your knowledge and your
 25 recollection.

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